



Comptroller General
of the United States

Washington, D.C. 20548

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Gary 148017

Decision

Matter of: The Entwistle Company

File: B-249341

Date: November 16, 1992

Henry E. Steck, Esq., Thurman, Harrison & Steck, for the protester.
Timothy B. Harris, Esq., Wickwire Gavin, P.C., for Stardyne, Inc., an interested party.
Neil L. Hirsh, Esq., Department of the Navy, for the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's decision to repair and rework aircraft carrier catapult trough covers, rather than replace them with new ones, is unobjectionable where agency reasonably determined that reworking the items was the least expensive approach.
2. A sole-source award of a contract to rework and repair catapult trough covers in accord with a specification calling for laser welding is not objectionable where the agency reasonably determined that only one source was available to perform the required work and the protester has failed to show that it had currently available equipment which could meet the agency's requirements.

DECISION

The Entwistle Company protests the Department of the Navy's award of a contract to Stardyne, Inc. under Basic Ordering Agreement (BOA) No. N00104-92-G-A057/Delivery Order 001, for the reworking of aircraft carrier catapult trough covers. Entwistle contends that the Navy improperly determined that Stardyne was the only responsible source capable of meeting the agency's needs.

We deny the protest.

BACKGROUND

The contract provides for the reworking of 324 catapult trough covers located on two CVN-68 class aircraft carriers, the U.S.S. Nimitz and the U.S.S. Vinson. The covers are 6 feet long steel structures that weigh 1,800 pounds; they consist of two pieces: a track for the carrier's nose gear shuttle (the mechanism that pulls an airplane along the carrier's runway with sufficient speed to achieve takeoff), and a top plate. As presently constructed, the two pieces are bolted together. The contract with Stardyne provides for cladding the steel with corrosion resistant material and laser welding the two pieces together to seal out corroding seawater.

In May 1991, the Navy determined that the covers on the Nimitz and the Vinson were so badly corroded that aircraft launching operations were being jeopardized. Based on prior procurements of new covers, the Navy determined that it would be significantly more cost effective to rework the existing units than to replace them with new ones. In addition, the Navy determined that by welding the top plate to the track, the covers could be converted to one-piece units that would more effectively seal out seawater and help prevent corrosion in the future.

Based on these technical considerations, the Navy experimented with various welding procedures for converting the covers to one-piece units. The agency found that the heat generated by conventional welding methods caused the covers to twist and warp and caused unacceptable weakening of the metal structure. Of the various welding processes the Navy evaluated, only high-power laser welding--in which a greater amount of heat was concentrated over a smaller area--produced satisfactory results. Accordingly, the Navy drafted a rework specification based on the use of the laser welding process. In October 1991, the agency published in the Commerce Business Daily (CBD) a notice that the draft specification was available for review. As a result, the Navy received expressions of interest from 32 potential sources, including Entwistle, and distributed the draft specification to them for comment. After reviewing the comments that were submitted, the Navy determined that only high-power laser welding would meet its needs, and that Stardyne was the only prospective offeror which had that capability.

When the repair specification was completed in May 1992, the Navy executed the BOA with Stardyne at a not-to-exceed ceiling price of \$3,199,500; on May 20, the agency issued request for quotations (RFQ) No. N00104-92-WY-C19 to that firm. After Stardyne responded with a quote on May 29, the Navy executed a justification and approval (J&A) for a

sole-source award to Stardyne.¹ The J&A stated that a sole-source award to Stardyne was necessary for the following reasons: (1) tests had shown that only the use of high-powered laser welding would assure the Navy of obtaining low distortion, minimum post-weld residual stress, and the requisite metal chemistry; (2) delivery of covers was urgently required for the carriers to receive scheduled maintenance, which in turn was necessary to remain in full operational status; and (3) Stardyne--the only firm for which first article test (FAT) requirements could be waived--was the only source able to employ the required laser-welding procedures in the required time. On June 25, the Navy issued delivery order 001 under the BOA, which referenced the final rework specification, NAEC-MISC-OR876; Entwistle's protest followed.

DECISION TO REWORK OR REPLACE

Entwistle takes issue with the agency's assessment that repairing the covers will be less expensive than replacing them. Entwistle asserts that in May 1991 there was a specification under which it was producing new one-piece covers for the Navy. According to Entwistle, the Navy could have met its needs on a competitive basis by continuing to purchase new one-piece covers at approximately the same cost that will be required to rework existing covers; instead, it asserts, the Navy improperly chose the more restrictive strategy of welding the existing covers.

We will not question a reasonable determination of an agency's minimum needs. Baucom Janitorial Serv., Inc., B-210216, May 31, 1983, 83-1 CPD ¶ 584. An agency's minimum needs include the need to procure services and supplies on the most cost-effective basis. LaBarge Prods., Inc., B-232201, Nov. 23, 1988, 88-2 CPD ¶ 510.

In this case, we find that the agency had a reasonable basis for its choice of procurement approach. The Navy explains that its choice was based on the determination that the reworked units would cost \$1.3 million less than new covers. This figure was based on the agency's procurement of 1,080

¹The J&A cited the authority of 10 U.S.C. § 2304(c)(2), which permits a noncompetitive procurement in circumstances of unusual and compelling urgency. For reasons discussed below, we find the procurement is more properly justified under 10 U.S.C. § 2304(c)(1), which allows a noncompetitive procurement where only one source is available to perform the required work. This procedural discrepancy, however, did not prejudice Entwistle since the firm does not claim it could have offered laser welding in time to meet the Navy's delivery requirements.

trough covers in 1988, 1989, and 1990 at an average unit price of \$15,000 (including shipping, paid for by the contractor), and the fact that the cost of reworking the existing covers under the contract with Stardyne cannot exceed \$10,875,² for an approximate per-unit saving of \$4,000. The agency's comparison of costs, and its conclusion, appear reasonable. The protester asserts that the \$15,000 cost the Navy used in its comparison was overstated; under Entwistle's most recent contract for manufacturing one-piece covers the unit price was only \$13,935. Whether or not Entwistle is correct that its lower figure should have been used, its argument does not refute the reasonableness of the agency's position; a \$3,000 per unit savings, while less than \$4,000, nevertheless clearly is significant, and thus still supports the agency's position that reworking the units is substantially less costly than replacing them.

Entwistle also speculates that the Navy's comparison failed to take into account the alleged higher service life and higher salvage value of new versus reworked units, which, Entwistle asserts, will result in lower long-term costs. The protester provides no evidence that reworked units in fact will not last as long as new ones, and there is nothing else in the record supporting that assumption. Moreover, even if Entwistle were correct, we see no reason why the agency would be compelled to base its determination on longer-term, rather than near-term, costs. Rather, we think the amount of immediate costs to the agency may legitimately play a role in a decision on repair versus replacement. This is particularly the case where the longer-term cost benefits are speculative; Entwistle's failure to present any evidence (beyond its own assertions) detailing the alleged long-term cost advantage from replacing the units suggests that the advantage here is a speculative one. We conclude that the agency's decision to rework the covers was reasonable.

IMPROPER BASIS FOR SOLE-SOURCE AWARD

Cost Savings

Entwistle further argues that, even if the Navy's choice of the repair strategy was proper, anticipated cost savings did not provide a proper justification for the sole-source award. Entwistle cites language in 10 U.S.C. § 2304(f)(5)(A), expressly forbidding an agency from using

²As noted above, the Navy's BOA with Stardyne provides for a ceiling price of \$3,199,500, resulting in a maximum price for the 324 covers of \$9,875 per unit; an additional \$1,000 per unit is required for shipping, this time paid for by the government, for a total cost to the government of \$10,875.

noncompetitive procedures on the basis of "concerns related to the amount of funds available to the agency for procurement functions."

This argument is inapposite. The Navy did not base its sole-source award on anticipated cost savings. As reflected in the J&A, and as discussed above, the agency based its action on its determination that only one source could meet its needs in the required time. That is a proper basis for a sole-source award. CICA permits a noncompetitive award where only one known responsible source is available and no other type of property or services will satisfy the needs of the agency. 10 U.S.C. § 2304(c)(1); Kollsman, A Div. of Sequa Corp.; Applied Data Technology, Inc., B- 243113; B-243113.2, July 3, 1991, 91-2 CPD ¶ 18.

We find that the Navy had a reasonable basis for the sole-source award to Stardyne. As noted above, the J&A explained that studies had shown that only laser welding would assure low distortion and minimal post-weld residual stress. In addition, it stated that the Navy required deliveries to begin November 1, 1992, and to continue at the rate of 25 covers per month until November 1993, and that any departure from that schedule would cause delays in completing other aspects of the ships' overhaul, thereby jeopardizing the carriers' operational capability.³ In explaining why only Stardyne could meet its technical needs in the required time, the J&A stated that: (1) Stardyne was the only firm ready and able to use the laser-welding process on a production basis; (2) Stardyne, under subcontract to Pennsylvania State University's Applied Research Laboratory, had developed the laser procedures for the Navy catapult rework program and had successfully reworked two covers as part of a pilot demonstration program; (3) based on Stardyne's demonstrated capability, the Navy would waive FAT and other qualification testing; and (4) any other firm would not be eligible for such waivers, and consequently would require considerable additional time to develop the capacity for high-power laser welding on a production basis. We find that these considerations, unrefuted by Entwistle, provided a reasonable basis for the Navy's determination that only Stardyne could perform the laser welding in the required time. Accordingly, we find nothing objectionable in the Navy's sole-source award to Stardyne.

³The J&A also stated that delays would result in excess dockage fees of approximately \$100,000 per day for each carrier.

Laser Welding

Entwistle does not dispute the Navy's finding that, if laser welding was required, only Stardyne could meet the Navy's needs in the time required; the protester contends, however, that the Navy did not have to specify laser-welding technology--and therefore did not have to make a sole-source award--in order to meet its minimum needs. In this regard, Entwistle contends that its own welding process--"electron beam" (EB) welding--could accomplish the repair work as well as Stardyne's laser process.

We find that the Navy reasonably concluded that laser welding was superior to Entwistle's EB process for this requirement. The record shows that the Navy tested and evaluated several kinds of more conventional welding methods, including Entwistle's EB process, before concluding that only laser welding could meet its minimum needs. Other processes, the agency found, resulted in unacceptable distortion and weakening of the trough cover structure.⁴ This finding was conveyed to Entwistle in response to its comments on the draft specification, where it argued that EB welding should be accepted as an alternate process. As the Navy explained in a letter of January 28, 1991:

⁴Stardyne, in commenting on the protest, states further that:

"The quality of the repaired covers will exceed the quality of new build covers. Mechanical testing evaluations show that high energy laser welds have properties which exceed conventional welds both in yield strength and in impact toughness. . . . Similar benefits are achieved for laser cladding (coating the high wear areas with corrosion resistant material) which is also a substantial requirement for the repair of trough covers. The higher processing rates also allow high energy laser welding and cladding services to be performed more quickly, which ensures a significantly shorter . . . delivery [time]."

"We concur that electron beam (EB) welding as an alternative low heat process would be desirable. . . . However, attempts to demonstrate EB welding failed to provide welds of acceptable quality (see . . . "Program to Demonstrate the Welding of Naval Catapult Trough Covers to Tracks using a High Power Laser Beam," by P.E. Denney and J.I. Nurminen, . . . 15 Jan. '87), particularly as measured in terms of toughness of the welds. . . ."

The technical judgments upon which an agency's determinations of its minimum needs are based on primarily the responsibility of the contracting officials; they will not be questioned absent a showing that they had no reasonable basis. CMI Corp., B-216164, May 20, 1985, 85-1 CPD ¶ 572. Entwistle has provided no evidence refuting the Navy's technical judgments or the formal studies on which they were based. Consequently, we find no basis for questioning the agency's determination regarding the relative merits of the laser and EB welding methods.

Lack of Advance Planning


Entwistle argues that the Navy could have met its delivery requirements on a competitive basis had it not unduly delayed finalizing the repair specification until May 1992, by which time it was too late to proceed on a competitive basis. Entwistle concludes that any need for a sole-source award was brought about by the Navy's lack of advance planning.

While an agency may not make a sole-source award where the need for the sole-source acquisition results from a lack of advance planning by procurement officials, 10 U.S.C. § 2304(f)(5)(A), Entwistle is not an interested party for purposes of raising this argument. Under our Bid Protest Regulations, a protester must have a direct economic interest in the outcome of a protest in order to qualify as an interested party to maintain the protest. 4 C.F.R. § 21.0(a) (1992); Black Hills Refuse Serv. 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. Since we already have found that the agency properly determined that laser welding was required, and Entwistle does not assert that it has this capability, Entwistle could not have competed for the requirement even had the agency completed the specification

⁵In this letter, the Navy also provided guidance in developing an acceptable welding system, and referenced another more recent study (Applied Research Laboratory Report 91-318, January 1992), "Evaluation of Laser Processed Aircraft Carrier Catapult Components."

at an earlier date. Under these circumstances, Entwistle lacks the required direct economic interest to qualify as an interested party to protest the adequacy of the agency's planning.'

The protest is denied.


for James F. Hinchman
General Counsel

'The J&A states that, through the qualification procedures outlined above, full and open competition will be obtained for all future procurements of this item. In addition, the record shows that the laser process is not proprietary to Stardyne and that other firms may acquire the necessary equipment from the manufacturer.